

1992

Gary K. Shelton v. Jerilyn A. Shelton : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS

BRIEF

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DOCKET NO. 92-0583 CA

IN THE COURT OF APPEALS
STATE OF UTAH

GARY K. SHELTON,

Plaintiff and Appellant, :

vs. :

JERILYN A. SHELTON,

Defendant and Appellee. :

C. A. No. 92-0583-CA

Priority: 15

BRIEF OF APPELLEE

On Appeal From the Judgment of the
Fifth Judicial District Court
in and for Washington County, State of Utah
Honorable James L. Shumate

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DEC 13 1993

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STATE OF UTAH

GARY K. SHELTON,	:	
	:	
Plaintiff and Appellant,	:	C. A. No. 92-0583-CA
	:	
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STATEMENT OF JURISDICTION

This is an appeal from a final judgment of the District Court for the Fifth Judicial District of Washington County. This Court has jurisdiction pursuant to Utah Code § 78-2a-3 (2) (i) (1993).

DETERMINATIVE STATUTES

Appellee believes that there are no constitutional provisions, statutes, ordinances, rules or regulations that are determinative.

ADDITIONAL FACTS

1. On July 31, 1992 the Fifth District Court issued a Memorandum Decision which contained its findings of fact and conclusions of law.

SUMMARY OF ARGUMENT

Plaintiff/Appellant, Gary K. Shelton("Gary"), after his trial counsel withdrew, filed a notice of appeal, *pro se*, on an array of issues. Gary's counsel for this appeal has, for obvious reasons, limited the appeal to one issue. Argument to support that issue, the retroactive application of temporary alimony, carefully avoids reference to the record of the proceedings. In fact, no transcript was ordered. Gary presents himself as a victim of trial court error; that he was wrongfully charged with an alimony obligation to his former wife, Defendant/Appellee, Jerilyn A. Shelton("Jerilyn"), retroactively applied. Gary should be grateful that he was not instead charged with perjury. The increased payments to Jerilyn were the result of the discovery, at her great expense, of the fact that Gary had lied to the court about his financial condition and that he was diverting his income from his personal corporation with payments to his mother among other devices. His appeal is a naked plea to apply case law to the instant case without reference to the reasons that the trial court acted as it did.

ARGUMENT

I. He who seeks redress in a court of equity must come with clean hands.

Gary argues that he "was obligated under a temporary court order to provide support to Appellee equivalent to one-half the mortgage payment for the marital residence. No other support and/or maintenance was ordered." (Appellant's Brief, p.6).

What Gary omits from his argument is that he was likewise obligated to be truthful to the court about his finances so that the court could enter an order which reflected the parties respective financial conditions. Jerilyn obtained information that Gary was siphoning money from his corporation by paying his elderly mother as if she was employed by the company and then "borrowing" the money from her. The commissioner determined that the earlier order based on his falsified reports to the court should be revised to reflect his actual income, and that Jerilyn was entitled to a portion of the hidden monies. (Commissioner's Memorandum and Recommended Decision, 3/4/92, R., pp. 235-236).

Justice Crockett, in a dissenting opinion in **Dowse v. Kammerman et al**, 246 P.2d 881 (Utah, 1952), considered the application of the "clean hands" doctrine. He stated that "No maxim of equity is older or more venerated than 'He who seeks redress in a court of equity must come with clean hands.' The very foundation of equity

is good conscience, and any conduct in connection with the matter in controversy which does not comport with good conscience should preclude any relief being granted to plaintiff." He concluded that " perusal of the authorities renders it abundantly clear that one who has resorted to bad faith or unfairness will appeal in vain to a court of conscience, even though he may have kept himself within the letter of the law."

And, citing 30 C.J.S., Equity, 95, p. 481, that:

" 'It is not alone fraud or illegality which will prevent a suitor from entering a court of equity. Any willful act in regard to the matter in litigation, which would be condemned and pronounced wrongful by honest and fair-minded men will be sufficient to make the hands of applicant unclean' so as to preclude his being aided by a court of equity."

That Gary's hands come to this court in a soiled condition cannot be disputed. The Commissioner's Memorandum and Recommended Decision (Id., R, pp.235-236) concluded that while Gary had "pleaded poverty and inability to pay alimony" he was lying to the court and engaging in a scheme of deception which resulted in "an on-bench ruling of contempt". The district court in adopting the commissioner's recommendation made a specific finding that Gary "deliberately set out to hide income, or create the appearance of reduced income, and consciously mis-lead the Court and counsel with regard to his financial standing." (Memorandum Decision, 7/31/92, para. 12, R., p. 539).

Gary now complains that the court erred in approving the


commissioner's adjustment of the alimony after learning that he was lying about his financial condition.

That this appeal is prosecuted at all shows Gary's total disregard for honesty, fair dealing and the courts. Jerilyn's trial counsel's bill for attorney's fees of \$33,901.00 was primarily due to Gary's unwillingness to disclose his assets in a forthright manner. (Shaw Affidavit, R., 502-513). To now seek a reduction in the award to Jerilyn suggests that Gary has learned nothing from the commissioner's finding of contempt and that perhaps he should have been dealt with more firmly for his perjury and contemptuous conduct.

CONCLUSION

For the reasons stated above the judgment of the district court should be affirmed and an appropriate award of attorney's fees and costs should be granted appellee as a sanction for the bringing of this frivolous appeal.

DATED this 29th day of November, 1993.



JOSEPH HARLAN BURNS
Attorney for Appellee

PROOF OF SERVICE

I hereby certify that two true and correct copies of the foregoing BRIEF OF APPELLEE were mailed on November 29, 1993, first class postage prepaid, to:

Carolyn Nichols
HALEY & STOLEBARGER
10TH Floor, Walker Center
175 South Main Street
Salt Lake City, Utah 84111



JOSEPH HARLAN BURNS

A D D E N D U M

FILED
FIFTH JUDICIAL DISTRICT COURT
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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR

WASHINGTON COUNTY, STATE OF UTAH

GARY K. SHELTON,)	BY <u>W</u>
)	
Plaintiff,)	MEMORANDUM DECISION
)	
vs.)	
)	
JERILYN A. SHELTON,)	
)	Case No. 914500159
)	
Defendant.)	

The above-entitled matter came before the Court for trial, beginning on April 6, 1992. Both parties appeared in person. The Plaintiff was represented by Mr. G. Michael Westfall, of the firm of Gallian and Westfall. The Defendant was represented by Mr. Michael R. Shaw, of the firm of Jones, Waldo, Holbrook and McDonough. The parties each testified and offered other witnesses and exhibits. At the request of the Court each party submitted a proposed inventory and distribution of assets on 3 1/2 inch computer disk to aid the Court in the preparation of this Memorandum Decision. Upon the stipulation of the parties the Court granted a Decree of Divorce early on in the proceedings, reserving for later ruling all issues of property division and valuation. Counsel for both parties were ordered to submit final argument in the form of written memoranda. The final such pleading was filed with the Court on June 4, 1992. The Court had taken under advisement all issues of property distribution and valuation together with all outstanding objections to the previous rulings made by the Court's Commissioner plus motions to strike those objections. The rulings made by the Commissioner and objected to by the Plaintiff are 1) Commissioner's Memorandum and Recom-

mended Decision, filed March 6, 1992 2) the Order of Contempt, filed April 6, 1992 and 3) the Order on Defendant's Motion to Compel Discovery, filed April 6, 1992.

The Court has reviewed the testimony, exhibits, transcripts of proceedings before the Commissioner, and the memoranda and other pleadings submitted by the parties. The Court now being fully advised in all the premises now makes and enters the following:

FINDINGS OF FACT

1. The Defendant is a bona fide resident of Washington County, State of Utah, having resided within the said county for more than three months prior to the filing of this action. The Plaintiff, though not residing in the State of Utah at the time of the trial of this case, resided within the State of Utah for more than three months immediately prior to this filing of this action. The Plaintiff also owns legal title to real property within Washington County, State of Utah, the distribution of which is one of the issues before the Court in this action.

2. The parties were married to each other on November 23, 1985¹⁹⁸⁵, and have since that time been husband and wife.

3. Prior to their marriage the parties entered into a Pre-Nuptial Agreement which bears a date of November 22, 1985, and has been marked and received as Exhibit #1. No evidence was presented at trial that would support any finding other than that the Pre-Nuptial Agreement was entered into by the parties freely and voluntarily without any fraud, coercion, over-reaching or material non-disclosure of assets.

4. Prior to their marriage the Plaintiff had been employed as a surveyor and the Defendant had been a realtor, both parties followed

these occupations in the State of California, where they lived until moving to the State of Utah in 1988.

5. The premarital assets, separate postmarital assets, marital assets, and income (both actual and potential) of the parties have been the source of the greatest contention in this matter. The character of an asset, whether it is premarital, separate marital, or jointly owned marital property, together with the value of said asset, was agreed by all the parties and the Court to be the primary focus of this litigation. In order to efficiently deal with the great number of assets claimed by the parties, the Court required counsel to submit their claimed list of assets to the Court on computer disc. Through the trial of this matter, both the Court and counsel referred to the parties' lists of assets in order to clarify the claims made by each side. As a guide to any possible review of this Court's findings and reasoning these lists are incorporated into this memorandum decision. These lists were also admitted into evidence as Exhibits, numbered 77 and 78.

6. The list of property submitted by the Plaintiff is specifically found by the Court to consist of those items set forth in Exhibit "A", attached hereto and incorporated herein by reference.

7. The list of property submitted by the Defendant is specifically found by the Court to consist of those items set forth in Exhibit "B", attached hereto and incorporated herein by reference.

8. The Court finds, both from the evidence at trial as well as from the submissions identified in paragraphs 6 and 7 above, that a substantial portion of the assets of the parties are located in Canada, or California, or are personal property easily moved from the present location to Canada, and therefore susceptible to being taken outside the

jurisdiction of this Court or a court in the State of California which would be required to honor this Court's Decree under the Full Faith and Credit clause of the United States Constitution. This finding is made specifically to point out the justification for the exercise of the Court's equity jurisdiction in an effort to establish the finality of the Decree in this matter.

9. The Court finds that following the marriage of the parties the Defendant left her work as a realtor and spent the majority of her time with the Plaintiff in travelling, working on the real and personal property owned by the parties in order to improve those assets, and also pursuing her own interests in antique furniture and crafts.

10. The Court finds that following the marriage of the parties the Plaintiff occupied his time in travel, the restoration of various older vehicles and aircraft more specifically described in Exhibits "A" and "B", and the improvement of the other real estate and personal property assets of the parties.

11. The Court finds that the motivation of both the Plaintiff and the Defendant in securing the separate identity of their premarital property was the preservation of certain assets for the benefit of the parties' respective heirs.

12. The Court, after having reviewed the Orders of the Court's Commissioner, specifically the Temporary Orders signed and filed on January 15, 1992, but which arose out of a hearing on June 18, 1991, and comparing the testimony of the Plaintiff at the hearing of February 25-26, 1992, and in reviewing Exhibit "A" to the Affidavit of Defendant filed in support of a motion for the issuance of an Order to Show Cause, filed February 19, 1992, and after having seen the Plaintiff testify in

open court and observing his demeanor and attitude toward this Court and these proceedings is prepared to make findings regarding those issues. The Court specifically finds that the Plaintiff had an understanding that he was to report to this Court any income over \$1,000.00 per month after the hearing of June 18, 1991, which denied the Defendant any temporary alimony. The actual signed Order of January 15, 1992, required reporting of any income over \$500.00. The record before the Commissioner is not clear regarding a specific dollar figure or reporting requirement. However, the state of the record is of no moment in the findings of this Court on the issue of the Plaintiff's behavior after the hearing of June 18, 1992. This is because it is clear that the Plaintiff understood a requirement to report any income over \$1,000.00 per month. The Court specifically finds that the Plaintiff, acting under his understanding of the reporting requirement, deliberately set out to hide income, or create the appearance of reduced income, and consciously mis-lead the Court and counsel with regard to his financial standing.

13. With respect to the personal property of the parties the Court finds that the parties, in entering into the Pre-Nuptial Agreement which is Exhibit #1 in this case, agreed to maintain as separate property the items of personal and real property in paragraphs I and II of the Agreement and Exhibits A and B to the Agreement.

14. The Court specifically finds, from the evidence the following items of personal property make up the a portion of the property of the parties acquired after the marriage, or treated as marital property to the extent that the parties moved this property to Canada and in some instances created writings to be submitted to the Canadian government which described this property, and the Court fixes the values as follows:

<i>Description of Item</i>	<i>Value</i>
1. D-8 caterpillar	\$8500
2. Case 4x4 tractor	\$8900
3. Root rake	\$1000
4. Packer	\$ 650
5. 3 bottom plow	\$ 950
6. Breaking plow	\$1350
7. Seeder	\$ 500
8. Cutter	\$ 900
9. 1941 antique army truck	\$5000
10. Skid shed/supplies	\$ 300
11. Drill seeder (?)	\$ 200
12. Water pump	\$ 200
13. Small caterpillar	\$1200
14. Root picker	\$ 500
15. 3 chain saws	\$ 400
16. Misc. tools	\$2000
17. Blue house - 2 bedroom (gift)	\$1000
18. Small table	\$ 50
19. Kitchen stove in guest cabin	\$ 50
20. Kitchen appliances, pots, pans in guest cabin	200
21. Linens in guest cabin	\$ 500
22. 2 rockers in guest cabin	\$ 70
23. Large oval rugs (gift)	\$ 1

24.	Wood stove in guest cabin	\$ 200
25.	Paperback books in guest cabin	\$ 1
26.	VCR in guest cabin	\$ 150
27.	Small generator in guest cabin	\$ 100
28.	Large generator in guest cabin	\$ 300
29.	3 down comforters in guest cabin	\$ 200
30.	Small antique dresser	\$ 150
31.	Antique trunk	\$ 50
32.	Sleeping bags in guest cabin	\$ 250
33.	Cook stove wood/propane in log home	\$ 800
34.	Light kitchen Hoosier in log home	\$ 300
35.	Large brown sofa in log home	\$ 50
36.	Old office furniture implements in log home	\$ 100
37.	Utility table in log home	\$ 50
38.	Treadle sewing machine in log home (refinished)	\$ 150
39.	Several silk flowers in log home	\$ 20
40.	2 wall lanterns (gift)	\$ 75
41.	1 large crock	\$ 45
42.	Linens in log home	\$ 250
43.	Dresser/sink built into log home	value in realty
44.	Corning dishes	\$ 75
45.	China in log home	\$ 100
46.	Wood chopping cart in log home	\$ 50
47.	Antique piano chair	\$ 100
48.	2 attorney bookcases in log home	\$ 250
49.	Propane refrigerator in log home	\$ 350
50.	Antique icebox in log home (refinished)	\$ 150

51. Antique scale in log home	\$ 85
52. Misc. antique bottles	\$ 50
53. Antique towel rack, antique mirror (refinished)	no value fixed
54. Dressing mirror	\$ 30
55. Handmade bedspread/curtains in log home	\$ 100
56. 2 bear pictures in log home	no value fixed
57. 2 chaise lounges	\$ 50
58. Lawnmower	\$ 50
59. Barbecue grill	\$ 75
60. Misc. lawn chairs	no value fixed
61. Antique barrels	\$ 60
62. Smoker gift	no value fixed
63. Brother typewriter	\$ 50
64. Antique parlor stove in log home	\$ 100
65. Pressure washer	\$ 200
66. Tools located in Canada	\$1000
67. Yellow canoe located in garage in Canada	\$ 300
68. Orange canoe located in garage in Canada	\$ 50
69. 19' Arenacraft boat located in Canada	\$3500
70. New motor located in garage in Canada	\$1300
71. Antique buckboard	\$ 150
72. All fishing gear located in Canada	\$ 250
73. Color fish finder	\$ 200
74. Antique icebox located in garage in Canada	\$ 100
75. Antique secretary located in garage in Canada	\$ 50
76. Power saw, radial arm located in Canada	\$ 400
77. Misc. supplies--chimney, pipe, flooring, oak, etc.	\$ 500

8. Antique 1 lung motor located in garage in Canada	\$ 50
9. Misc. hoses, pulleys, cable,	\$ 400
0. 3 ice chests	\$ 20
1. Wheelbarrow	\$ 20
2. Antique brass bed	\$ 100
3. Antique soda fountain chairs	\$ 80
4. Trailer	
\$ 200	
15. 2 fly-tying sets	\$ 50
16. Antique farm implements:	\$ 100
17. Radio phone	\$ 350
18. CB	\$ 50
19. Radar Detector	\$ 150
20. 3 end tables	\$ 100
21. Wall unit	\$ 150
SUBTOTAL	\$49,207

15. The Court additionally finds the following items of personal property were acquired by the parties after the marriage and should be treated as marital property:

1. Antique child crib (refinished)	\$ 75
2. Misc. crafts/leather/patterns; misc. cookbooks and pictures (gift)	no value fixed
3. Tole painting/wreaths/farm-animals	no value fixed
4. Large bird cage	\$ 50
5. Canning jars/supplies	\$ 350
6. Glass cabinet	\$ 650
7. Handmade log box	\$ 100

8.	Pressure canner	\$ 100
9.	1 30-30 semi-automatic rifle (gift)	\$ 200
10.	Afghan given to Ms. Dawson	\$ 50
11.	Large canner pot	\$ 50
12.	Silver canoe	\$ 200
13.	Antique crib (unfinished)	\$ 100
14.	Electric jigsaw	\$ 20
15.	Antique barley twist table	\$ 300
16.	3 antique pressback chairs, refinished	\$ 300
17.	Dark bookshelf w/ glass shelves	\$ 100
18.	King-size bed	\$ 200
19.	Headboard for king-size bed	no value fixed
20.	Headboard (handmade)	\$ 40
21.	Bedspread/curtains (hand-quilted)	\$ 50
22.	2 recliners	\$ 100
23.	4 bookcases	no value fixed
24.	Fireplace insert	\$ 300
25.	TV, stereo, tape, disc, VCR	\$1500
26.	Tole painting paint, brushes, sewing machine	no value fixed
27.	G.E. refrigerator	\$ 500
28.	Dehydronator	\$ 5
29.	Powder guns (2)	no value fixed
30.	Two violins	no value fixed
31.	Garnet ring	\$ 50
32.	Wedding ring	\$ 300
33.	Large ice chest	no value fixed
34.	Air brush	\$ 130

15. Small park bench	no value fixed
16. Schwinn tandem bike	\$ 300
17. Saw, hammer, drill, level, wood clamps, wrench sets (one each of socket, crescent, pipe and box-end, if any) screwdriver set	no value fixed
18. Ski equipment purchased for Defendant	no value fixed
10. Garage vac	no value fixed
10. Ladder	no value fixed
SUBTOTAL	\$ 6135

16. The Court finds from the evidence, the property schedules submitted by the parties that the following items of personal property were owned by the Defendant before the marriage of the parties, or were purchased with separate, pre-marital assets of the Defendant and are, therefore, separate and pre-marital property of the Defendant:

1. Ethan Allen 72" round table/6 chairs	\$ 300
2. Ethan Allen hutch	\$ 200
3. 2 black love seats	\$ 350
4. Ethan Allen drop leaf end table	\$ 150
5. Armoire mirror doors	\$ 450
6. Dark Hoosier	\$ 500
7. Books, cookbooks, other books relating to the Defendant's interests and hobbies	no value fixed
8. Small TV from Bayliner Boat	no value fixed
9. Large canner pot	no value fixed
10. Victoria juicer/food processor	"
11. All tole painting in Canada	"
12. Alabaster green egg	"
13. Chicken pot pads	"

14.	Small black bear	"
15.	Small bear on coffee table	"
16.	Small red stapler(Defendant's mother's)	"
17.	14" cast iron fry pan	"
18.	Thumb print pan	"
19.	10" fry pan, 14" pan	"
20.	Brass potholder	"
21.	Bayliner 27' boat plus its trailer, dinghy, television set, lifejackets, and all other items and equipment purchased with the boat	\$13000
22.	1984 Buick station wagon	\$1000
23.	1981 Jaguar	\$4000
24.	Antique secretary (Defendant's Mother's)	no value fixed
25.	Kitchen Aid mixer	\$ 200
26.	Sewing machine	\$ 200
27.	Personal clothes	no value fixed
28.	Animals handmade by Defendant	"
29.	Crafts/leather	\$ 200
30.	2 rust love seats	\$ 600
31.	Coffee table, leaded glass	\$ 500
32.	Armoire (refinished)	\$ 600
33.	Antique wingback chair (reupholstered)	\$ 350
34.	Antique reproduction chair (reupholstered)	\$ 200
35.	Barley twist drop leaf table and chair	\$ 300
36.	Antique lamp and two sconces	\$ 200
37.	Grandfather clock	\$ 599
38.	Old antique clock	\$ 100
39.	Marble backgammon set	no value fixed

40.	Silver/china/crystal	\$2000
41.	Antique tea set (Defendant's family heirloom)	no value fixed
42.	Old goblets	no value fixed
43.	Old Deacon chair/refinished	\$ 200
43.	Patio table, chairs	\$ 900
44.	Kitchen items	\$ 200
45.	Headboard for king-size bed	no value fixed
46.	Lamp	\$ 100
47.	King-size bed located in Utah master bedroom	no value fixed
48.	Triple dresser	no value fixed
49.	2 pews	\$ 100
50.	Jewelry chest	no value fixed
51.	2 nightstands	no value fixed
52.	Fireplace insert	\$ 350
53.	Old antiques collected by Defendant	no value fixed
54.	Lamp, pictures, coffee maker in Utah	"
55.	Cookbooks	"
56.	Pots and pans	"
57.	5 oil paintings (painted by Defendant's mother)	"
58.	Picture grandfather	"
59.	Commercial sewing machine	"
60.	Antique desk chair	\$ 100
61.	Antique school clock	no value fixed
62.	Antique banjo	no value fixed
63.	Antique bucksaw	no value fixed
64.	Jewelry - heart diamond, round diamond, diamond bracelet, charms, chain	\$1000
65.	Chain and chain bracelet	\$ 70

66. Park bench	no value fixed
67. Three cast iron chairs	"
68. Brown desk chair	"
69. All yard tools in Utah	"
70. Black velvet picture	"
71. Antique shoe repair (Defendant's family heirloom)	"
72. Sad irons (Defendant's family heirloom)	"
73. 2 brown flowered wingback chairs	\$ 100
74. Antique dresser in Canada master bedroom	\$ 500
75. Green bedroom wingback chair	\$ 100
76. Large armoire	\$ 350
77. Large antique trunk (refinished)	\$ 150
78. Old antique cans	no value fixed
79. Round drop-leaf end table	\$ 100
80. Pink antique jar	\$ 100
81. Brass pot holder	\$ 120

SUBTOTAL **\$30539**

17. The Court finds, from the exhibits submitted by the parties, together with the testimony at trial that the following list of personal property consists of the separate, pre-marital property of the Plaintiff:

1. Cessna 210 airplane	\$48500
2. Taylorcraft airplane (rebuilt)	\$9500
3. 1959 Jaguar (refurbishing)	\$4500
4. 1965 Jaguar XKE	\$5000
5. Fairchild PT 19 airplane	\$15000
6. Sofa in Utah	no value fixed

7. Loveseat in Utah	no value fixed
8. Antique survey equipment	no value fixed
9. Two (2) guitars	no value fixed
10. Oil painting	no value fixed
11. Remington copies 5 Western pictures, 2 Indian picture, 2 cowboy picture	\$ 100
12. Books in Utah on Plaintiff's profession or hobbies or owned by Plaintiff before the marriage	\$ 100
13. Car engine hoist	\$ 200
14. Propane heaters	\$ 15
15. Drill press	\$ 150
16. Metal bender/shear	\$ 100
17. Old car steam cleaner	\$ 100
18. Tools in toolboxes and located in Utah garage excepting those tools awarded to the Defendant as set forth hereinafter	\$1000
19. All paint associated with car or aircraft restoration	\$ 500
20. Car/airplane parts	\$ 100
21. Raleigh 10-speed bike	\$ 15
22. Ski equipment purchased for Plaintiff	no value fixed
23. Small camelback trunk	\$ 75
24. Rectangular antique table, 6 chairs	\$1500
25. Telescope	\$ 200
SUBTOTAL	\$86655

18. The Court finds the following parcels of real property are owned by the parties, and the Court fixes the value of those parcels as set forth:

Parcel	Value
1. Home in Bloomington, St. George, Utah	\$164,000
2. Property located on Williston Lake, British Columbia, Canada	\$55,000
3. Farming/leasehold property British Columbia, Canada	\$15,000 ✓
4. Defendant's property in Arrow Bear, California	\$20,000 ✓
5. Defendant's property in Pullman, Michigan	1,000 - \$10,000 ✓

In fixing the values on the Utah home and the Williston Lake property, the Court has reviewed the appraisals submitted by the parties, plus the photographs in evidence, and has carefully noted the testimony of the parties and the arguments of counsel.

The home in Bloomington, St. George, Utah, is subject to an outstanding debt secured by a Deed of Trust in the approximate sum of \$89,000.00. During the pendency of this action the parties have both been ordered to each pay one-half of the monthly house payment of \$981.00. The Court finds that a substantial portion of the down payment for the Bloomington home came from the sale of the Defendant's home in California, which was a pre-marital asset. The Court specifically finds that, though both parties contributed pre-marital assets to the purchase of the home, it was in a state of distress when purchased by the parties and was substantially improved, both in appearance and value, by their joint efforts. The Court also finds that certain personal, pre-marital assets of the Plaintiff, mostly vehicles and aircraft, were also substantially improved in appearance and value by the joint efforts of the parties. The equities of this case, and the findings of this Court, require that the equitable interest of each party, through labor expended, in the Bloomington home and the aircraft and vehicles are roughly equal in value.

The Court finds that the Defendant's property in Arrow Bear, California, and Pullman, Michigan, are her separate and pre-marital property as agreed in the pre-marital agreement.

With respect to the Farming/leasehold property the Court specifically finds that the value of the property may be greatly enhanced by the clearing of the poplar/aspen trees on the property and the development of the property as a viable farming area. However, that potential has not yet been realized and title in fee simple is not yet vested in the parties. From the testimony heard at trial and the memoranda submitted by counsel, the Court finds that only the Plaintiff may obtain title to the Farming/leasehold property so long as he pursues his status as a "landed immigrant" with the Canadian government. Because the Defendant does not qualify to take title, the Court considers her interest to be equitable only. In assessing the value of the Farming/leasehold property the Court has considered Exhibits #75 and #113. The Court is not persuaded by the Plaintiff's disclaimers that the trees on the land are of no value and that the trees are only useful to assist the removal of the stumps and roots.

19. The Court specifically finds that at the time of the filing of this action the Defendant had \$10,000.00 in cash savings which represented the funds remaining from the sale of her home in Fountain Valley, California. This \$10,000.00 was spent by the Defendant during the pendency of this action in order to pay ordinary living expenses. The expenditure of these funds was necessary because the Plaintiff had persuaded the Court's Commissioner that he could not afford to pay temporary alimony. The Court's Commissioner and this District Judge have been convinced, by a preponderance of the evidence, that during the

pendency of this action the Plaintiff was capable of paying temporary alimony and support in the amount of \$1,000.00 per month for the support and care of the Defendant beginning in the month of June, 1991. This finding is made with careful consideration of the mandate established by the Utah Supreme Court in Jones v. Jones, 700 P.2d 1072 (Utah, 1985), which stated:

This Court has described the purpose of alimony: '[T]he most important function of alimony is to provide support for the wife as nearly as possible at the standard of living she enjoyed during marriage, and to prevent the wife from becoming a public charge.' English v. English, 565 P.2d at 411. With this purpose in mind, the Court in English articulated three factors that must be considered in fixing a reasonable alimony award:

[1] the financial conditions and needs of the wife;

[2] the ability of the wife to produce a sufficient income for herself; and

[3] the ability of the husband to provide support.

Of course this issue of alimony pending the trial of the case is not addressed in Jones. However, that case is useful in analyzing the needs for alimony awarded on a temporary basis, pending the trial of the matter. Only one recent Utah case discusses an award of temporary alimony, pending trial, and the facts and issues appealed in Kerr v. Kerr, 610 P.2d 1380 (Utah 1980), are not of guidance in this matter.

With respect to item # 1 of the JONES criteria the Court finds that as of the filing of this action on May 30, 1991, the Defendant was unemployed. She was required to pay \$981.00 per month for housing and to protect the parties investment in the home in Bloomington. Her other regular and ordinary expenses, which maintained her standard of living at a level below that which she enjoyed during the marriage, totaled an additional \$1,230.00, as shown on Exhibit No. 80. Her total needs were \$2,211.00 per month.

As to item #2 of the Jones test, the Court finds that the Defendant, at the time of the filing of this action, was capable only of employment at a minimum or low wage job. The Defendant was not a licensed real estate agent in the State of Utah when this case was filed, and she had been retired since 1986. The Court can, and does, impute income to the Defendant of \$731.00 per month, gross income before taxes. This imputed income is based upon the minimum wage of \$4.25 per hour and a forty-hour work week with 4.3 weeks per month.

With regard to the third element of a Jones analysis, the Court must review the Plaintiff's ability to provide support. The Court finds that the Defendant receives retirement income of \$1,600.00 per month plus income from his ownership in SVS Corporation. The Court specifically examined the Plaintiff with respect to the income of SVS Corporation and found that, without aviation fuel sales, the monthly gross income of SVS was over \$18,000.00. The Plaintiff is a two-thirds owner of the corporation. The tax returns filed by the Plaintiff and admitted into evidence as Exhibits 4, 5, 6, and 7 show substantial income from SVS Corporation each year, with over \$60,000.00 income in 1990 alone. The monthly income available to the Plaintiff exceeds \$6,000.00 per month. The Plaintiff lists his monthly expenses on Exhibit #79 at \$2,612.00.

20. The Court finds that since the filing of this action the Defendant has become a licensed real estate agent in the State of Utah and has re-entered the work force as a realtor in the St. George area. At the time of the trial in this matter the Defendant had been paid two sales commissions, one in December of 1991, and one in March of 1992, totalling \$4,010.28. At the time of the trial the Defendant anticipated

an additional income of \$8,974.07 from real estate sales commissions to be paid by the end of July, 1992. The income produced by the Defendant from December 1991 through July 1992, a period of eight months, supports a finding that the Defendant is now capable of earning \$20,000.00 yearly or \$1,666.00 per month. The Court finds that any higher income for the Defendant is speculative, but the Defendant did testify that in time she would develop a "farm" of real estate contacts which would produce a regular income flow. The Defendant testified that it would take approximately two years for her to develop the "farm", and the Court so finds.

21. Regarding the Defendant's financial needs after the dissolution of the marriage, the Court views the evidence in the light of the case of Martinez v. Martinez, 754 P.2d 759 (Utah Ct. App. 1988) which noted:

In Jones v. Jones, 700 P.2d 1072 (Utah 1985), the Court conducted an extensive analysis of these three factors. Although the trial judge carefully considered the factors outlined in Jones, because plaintiff and the children were living in an artificially depressed standard of living, the award of only \$400.00 per month of terminable alimony is inadequate. We refuse to penalize plaintiff for trying to live within her means and failing to show higher necessary expenses.

FOOTNOTE

A review of plaintiff's expenses shows them to be extremely low and based upon what she actually spent rather than estimates of what she needed to sustain herself and her children at a reasonable standard of living based upon the total family income.

In reviewing the record before the Court, the Defendant's listed living expenses total \$2,761.60, which excludes dental treatments which she has delayed. The Court has found that after the marriage of the parties they enjoyed a period of retirement and travel. The dissolution of this marriage has, as divorce always does except for the most wealthy, required the Defendant's return to the work place. The Court in assessing the financial condition and needs of the Defendant (as is

required by Jones) must also note that during the pendency of this action the Defendant has lived off of her savings and what earnings she could generate in re-entering her profession as a realtor here in Utah. The Court finds that the Defendant, prior to the divorce action, enjoyed the benefits of an income of over \$6,000.00 per month. The Defendant's present needs are at the level of \$3,000.00 per month and will remain so for the foreseeable future. Her present income is \$1,666.00 per month and hopefully will improve as she continues to build her real estate "farm".

The Court has already found that the Plaintiff has the ability to produce income of over \$6,000.00 per month. The Court specifically finds that an award of rehabilitative alimony of \$1,400.00 per month for a period of two years from the date of this Memorandum Decision will adequately prepare the Defendant to provide for her own needs following this marriage of ⁷~~six~~ years. The issue of payment of temporary alimony which has been awarded by the Court's Commissioner, and is now approved and adopted by the District Judge, will be addressed in the Conclusions of Law set forth hereafter.

22. With respect to the issue of Attorney's fees, the Court ordered that Counsel for both parties submit affidavits regarding the attorney's fees incurred in the prosecution of this case. The affidavits were submitted by counsel and filed with the Court on July 17, 1992. The Court specifically finds that the issues in this case regarding valuation and locations of various property of the parties are extraordinary in complexity and that the detailed work of both parties' counsel in preparing for trial and in the presentation of the evidence in this case justifies and makes reasonable attorney's fees that would otherwise be

extraordinary. Utah law on the award of attorney's fees is established by statute and re-affirmed in the case of Walther v. Walther, 709 P.2d 387 (Utah, 1985) where the Supreme Court stated:

Utah law allows the court to award either party costs and attorney fees in a divorce action. U.C.A., 1953, ^U 30-3-3 (1984 ed.). The award must be based on the need of the party and the reasonableness of the fees awarded, a matter largely left to the discretion of the trial court. *Kerr v. Kerr*, Utah, 610 P.2d 1380, 1384 (1980); *Beals v. Beals*, Utah, 682 P.2d 862 (1984). An award of attorney fees should not be overturned absent a clear showing that the trial court abused its discretion. *Burt v. Burt*, 59 Utah 457, 465, 204 P. 91, 94 (1922).

The Court specifically finds that the attorney's fees set forth in both Mr. Shaw's and Mr. Westfall's affidavits are reasonable under the circumstances of this complex case. The Court finds that total attorney's fees and costs for Mr. Shaw's work are \$33,901.00 consisting of \$32,590 in attorney's fees and \$1,311 in court reporter (deposition and transcript charges) and witness fees. The Court finds that total attorney's fees and costs for Mr. Westfall's work are \$22,154.55 consisting of \$19,640 in attorney's fees and \$2,514.55 in deposition, witness, appraisal and filing fees.

23. Another issue before the court consists of the distribution and valuation of the proceeds of the sale of the motor home previously owned by the parties and the income tax refund for the year 1990. The Court finds that as of the date of the filing of this action there was still due and owing from the sale of the motor home the sum of \$2,700.00, and the Court further finds that, under the orders of the Court's Commissioner, these funds were paid to the Defendant in an effort to pay a portion of the Plaintiff's past due temporary alimony obligation. The Court finds that the majority of the proceeds of the sale of the motor home were spent by the Plaintiff, but the Defendant has now received approximately \$8,700 from the sale of the motor home. The Court finds

that the equities of this case demand that the \$2,700 paid to the Defendant not be credited against unpaid temporary alimony, but be accounted as her final share of the motor home sale. No further finding or order will be made with respect to that asset.

With respect to the parties' 1990 income tax refund, the Court makes no finding as to the amount of the refund for the reason that the tax return was not offered by either party. It is found that the Plaintiff, because he was the major source of income for the year 1990 is equitably entitled to the entire refund, if any. If there is a tax liability for 1990 the Plaintiff should also be liable for the entire 1990 income tax debt.

24. The Plaintiff has incurred debts of \$12,000.00 to Judy Jordan and \$8,000.00 to repair the engine on the Cessna aircraft.

CONCLUSIONS OF LAW

1. In applying what appears to be a valid and enforceable pre-nuptial agreement entered into by the parties the Court is guided by the case of Rudman v. Rudman, 812 P.2d 73 (Utah Ct. App., 1991) which sets forth the following standards with regard to pre-nuptial agreements:

Premarital agreements are construed in the same manner as other contracts. Neilson v. Neilson, 780 P.2d 1264, 1267 (Utah Ct. App. 1989). . . . The prenuptial agreement spells out which property should be classified as marital and which should be classified as premarital. Once that has been determined, the court has discretion as to how to divide the marital property between the parties. Haumont v. Haumont, 793 P.2d 421, 424 (Utah Ct. App. 1990); Munns v. Munns, 790 P.2d 116, 118 (Utah Ct. App. 1990) (failure of the court to accept one party's proposed valuation of property is not an abuse of discretion). . . . Additionally, if any amounts used to acquire property during the marriage could be traced to premarital property, those amounts would remain the separate property of that individual. Thus, to preserve the premarital integrity of an asset that has been arguably commingled with property acquired after the marriage, that asset, or its severable part, must be traced to its original source.

However, the Court is also mindful of its considerable latitude to

equitably distribute the assets of the parties, even to the point of invading what may be premarital assets in order to award alimony. This authority is found in Sampinos v. Sampinos, 750 P.2d 615, (Utah Ct. App., 1988):

The Utah Supreme Court has enunciated that the purpose of spousal support is to 'enable the receiving spouse to maintain as nearly as possible the standard of living enjoyed during the marriage and to prevent the spouse from becoming a public charge.' Paffel v. Paffel, 732 P.2d 96, 100 (Utah 1986). Three factors must be considered in fixing alimony awards: (1) the financial condition and needs of the spouse claiming support; (2) the ability of the spouse to produce sufficient income for him- or herself; and (3) the ability of the responding spouse to provide the support. *Id.* at 101.

In fashioning an award of alimony the Court is also directed by the Legislature in 30-3-5(1), Utah Code Annotated, 1953, as amended, which states, "When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties." This statute does not vary in substance from the law quoted in Sampinos, *supra.*, where the Court of Appeals said:

At the time of the divorce, Utah Code Ann. ^U 30-3-5(1) (1984) provided that '[w]hen a decree of divorce is rendered, the court may include in it such orders in relation to the... property and parties,... as may be equitable.' The Utah Supreme Court has consistently interpreted this statutory provision to confer broad discretion upon the trial courts in the division of property, regardless of its source or time of acquisition. See Englert v. Englert, 576 P.2d 1274, 1276 (Utah 1978); Searle v. Searle, 522 P.2d 697, 700 (Utah 1974). In exercising this discretion, the trial court's objective is to 'allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives.' Burke v. Burke, 733 P.2d 133, 135 (Utah 1987) (footnote omitted). Furthermore, in fashioning an equitable property division, the trial court should consider the following principles of equity outlined in Burke:

Premarital property, gifts, and inheritances may be viewed as separate property, and in appropriate circumstances, equity will require that each party retain the separate property brought to the marriage. However, the rule is not invariable. In fashioning an equitable property division, trial courts need consider all the pertinent circumstances. *Id.* (footnotes omitted).

In determining an equitable property division, the court may consider when property was acquired, the source of the property, the parties' standard of living, respective financial conditions, needs and earnings capacity, the duration of the marriage, and the parties' ages at the

times of marriage and divorce.

In light of the Court's finding in paragraph 3 of the Findings of Fact above, that there is a valid Pre-Nuptial Agreement freely entered into between the parties, and the compelling need in this case to comply with the standards set forth in Sampinos, supra., as quoted above, the rationale of the Utah Court of Appeals in Neilson v. Neilson, 780 P.2d 1264 (Utah Ct. App., 1989) should be examined. The Neilson Court stated:

Although the Utah Supreme Court has never ruled directly on the validity of prenuptial agreements governing the disposition, upon divorce, of property owned by parties at the time of their marriage, it recently pointed out in dictum that they are generally valid 'so long as there is no fraud, coercion, or material nondisclosure.' Huck v. Huck, 734 P.2d 417, 419 (Utah 1986).

The Utah Supreme Court also indicated in Huck that prenuptial agreements would be treated differently insofar as they purported to eliminate payment of child support or alimony. Enforcement of these provisions is left to the discretion of the trial court. Huck, 734 P.2d at 419; Berman, 749 P.2d at 1274.

The reasons for invalidating a prenuptial agreement enumerated in Huck and Berman are not necessarily an exhaustive listing of the grounds on which a Utah court could properly refuse enforcement.

In addition, the Court must consider the clear language of the Utah Court of Appeals in the case of Walters v. Walters, 812 P.2d 64 (Utah Ct. App. 1991, which further justifies the examination of and possible distribution of pre-marital assets when needed. Walters states:

'When a decree of divorce is entered, the court may include in it equitable orders relating to the children, property, and parties....' Utah Code Ann. ^U 30-3-5 (1) (1989). The Utah Supreme Court has concluded that this statute confers 'broad discretion upon trial courts in the division of property, regardless of its source or time of acquisition.' Burke v. Burke, 733 P.2d 133, 134-35 (Utah 1987) (citations omitted). Further, 'the purpose of property divisions is to allocate property in the manner which 'best serves the needs of the parties and best permits them to pursue their separate lives.'" Noble v. Noble, 761 P.2d 1369, 1373 (Utah 1988) (quoting Burke 733 P.2d at 135).

As a general rule, however, premarital property is viewed as separate property, and equity usually requires that 'each party retain the separate property he or she brought into the marriage.' Haumont v. Haumont, 793 P.2d 421, 424 (Utah Ct. App. 1990). However, this rule is not invariable. 'In fashioning an equitable property division, trial

courts need consider all of the pertinent circumstances.' Burke, 733 P.2d at 135. Factors generally considered are:

the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs, and earning capacity; the duration of the marriage; the children of the marriage; the parties' ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded. Of particular concern... is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties.

Id. (Citations omitted). Thus, where unique circumstances exist, a trial court may reallocate premarital property as part of a property division incident to divorce. Haumont, 793 P.2d at 424-25. See also Burt v. Burt, 799 P.2d 1166, 145 Utah Adv. Rep. 29, 32 (Ct. App. 1990).

2. The following items of personal property associated with the Williston Lake property and farming operation in Canada, and found by the Court to be part of the marital property should be awarded to the Plaintiff with the associated values as fixed by the Court.

Description of Item		
1.	D-8 caterpillar	\$8500
2.	Case 4x4 tractor	\$8900
3.	Root rake	\$1000
4.	Packer	\$ 650
5.	3 bottom plow	\$ 950
6.	Breaking plow	\$1350
7.	Seeder	\$ 500
8.	Cutter	\$ 900
9.	1941 antique army truck	\$5000

10.	Skid shed/supplies	\$ 300
11.	Drill seeder (?)	\$ 200
12.	Water pump	\$ 200
13.	Small caterpillar	\$1200
14.	Root picker	\$ 500
15.	3 chain saws	\$ 400
16.	Misc. tools	\$2000
17.	Blue house	
	2 bedroom (gift)	\$1000
18.	Small table	\$ 50
19.	Kitchen stove in guest cabin	\$ 50
20.	Kitchen appliances,	
	pots, pans in guest cabin	200
21.	Linens in guest cabin	\$ 500
22.	2 rockers in guest cabin	\$ 70
23.	Large oval rugs (gift)	\$ 1
24.	Wood stove in guest cabin	\$ 200
25.	Paperback books in guest cabin	\$ 1
26.	VCR in guest cabin	\$ 150
27.	Small generator in guest cabin	\$ 100
28.	Large generator in guest cabin	\$ 300
29.	3 down comforters in guest cabin	\$ 200
30.	Small antique dresser	\$ 150
31.	Antique trunk	\$ 50
32.	Sleeping bags in guest cabin	\$ 250
33.	Cook stove wood/propane in log home	\$ 800
34.	Light kitchen Hoosier in log home	\$ 300

35. Large brown sofa in log home	\$ 50
36. Old office furniture implements in log home	\$ 100
37. Utility table in log home	\$ 50
38. Treadle sewing machine in log home (refinished)	\$ 150
39. Several silk flowers in log home	\$ 20
40. 2 wall lanterns (gift)	\$ 75
41. 1 large crock	\$ 45
42. Linens in log home	\$ 250
43. Dresser/sink built into log home	value in realty
44. Corning dishes	\$ 75
45. China in log home	\$ 100
46. Wood chopping cart in log home	\$ 50
47. Antique piano chair	\$ 100
48. 2 attorney bookcases in log home	\$ 250
49. Propane refrigerator in log home	\$ 350
50. Antique icebox in log home (refinished)	\$ 150
51. Antique scale in log home	\$ 85
52. Misc. antique bottles	\$ 50
53. Antique towel rack, antique mirror (refinished)	no value fixed
54. Dressing mirror	\$ 30
55. Handmade bedspread/curtains in log home	\$ 100
56. 2 bear pictures in log home	no value fixed
57. 2 chaise lounges	\$ 50
58. Lawnmower	\$ 50
59. Barbecue grill	\$ 75
60. Misc. lawn chairs	no value fixed
61. Antique barrels	\$ 60

62. Smoker gift	no value fixed
63. Brother typewriter	\$ 50
64. Antique parlor stove in log home	\$ 100
65. Pressure washer	\$ 200
66. Tools located in Canada	\$1000
67. Yellow canoe located in garage in Canada	\$ 300
68. Orange canoe located in garage in Canada	\$ 50
69. 19' Arenacraft boat located in Canada	\$3500
70. New motor located in garage in Canada	\$1300
71. Antique buckboard	\$ 150
72. All fishing gear located in Canada	\$ 250
73. Color fish finder	\$ 200
74. Antique icebox located in garage in Canada	\$ 100
75. Antique secretary located in garage in Canada	\$ 50
76. Power saw, radial arm located in Canada	\$ 400
77. Misc. supplies--chimney, pipe, flooring, oak, etc.	\$ 500
78. Antique 1 lung motor located in garage in Canada	\$ 50
79. Misc. hoses, pulleys, cable,	\$ 400
80. 3 ice chests	\$ 20
81. Wheelbarrow	\$ 20
82. Antique brass bed	\$ 100
83. Antique soda fountain chairs	\$ 80
84. Trailer	\$ 200
85. 2 fly-tying sets	\$ 50
86. Antique farm implements:	\$ 100
87. Radio phone	\$ 350
88. CB	\$ 50

89. Radar Detector	\$ 150
90. 3 end tables	\$ 100
91. Wall unit	\$ 150
SUBTOTAL	\$49,207

3. The following items of personal property should be awarded to the Defendant as her sole and separate property from those items found by the Court as marital property with the associated value as fixed by the Court:

1. Antique child crib (refinished)	\$ 75
2. Misc. crafts/leather/patterns; misc. cookbooks and pictures (gift)	no value fixed
3. Tole painting/wreaths/farm-animals	no value fixed
4. Large bird cage	\$ 50
5. Canning jars/supplies	\$ 350
6. Glass cabinet	\$ 650
7. Handmade log box	\$ 100
8. Pressure canner	\$ 100
9. 1 30-30 semi-automatic rifle (gift)	\$ 200
10. Afghan given to Ms. Dawson	\$ 50
11. Large canner pot	\$ 50
12. Silver canoe	\$ 200
13. Antique crib (unfinished)	\$ 100
14. Electric jigsaw	\$ 20
15. Antique barley twist table	\$ 300
16. 3 antique pressback chairs, refinished	\$ 300

17. Dark bookshelf w/ glass shelves	\$ 100
18. King-size bed	\$ 200
19. Headboard for king-size bed	no value fixed
20. Headboard (handmade)	\$ 40
21. Bedspread/curtains (hand-quilted)	\$ 50
22. 2 recliners	\$ 100
23. 4 bookcases	no value fixed
24. Fireplace insert	\$ 300
25. TV, stereo, tape, disc, VCR	\$1500
26. Tole painting paint, brushes, sewing machine	no value fixed
27. G.E. refrigerator	\$ 500
28. Dehydronator	\$ 5
29. Powder guns (2)	no value fixed
30. Two violins	no value fixed
31. Garnet ring	\$ 50
32. Wedding ring	\$ 300
33. Large ice chest	no value fixed
34. Air brush	\$ 130
35. Small park bench	no value fixed
36. Schwinn tandem bike	\$ 300
37. Saw, hammer, drill, level, wood clamps, wrenches (both socket, crescent, pipe and box-end, if any) screwdriver set	no value fixed
38. Raleigh 10-speed bike	<u>\$ 15</u>
39. Ski equipment purchased for Defendant	no value fixed
40. Garage vac	no value fixed
41. Ladder	no value fixed
SUBTOTALS	\$6135

4. The following items should be awarded to the Plaintiff, the Court having found that they are separate and pre-marital property owned by the Plaintiff before the marriage of the parties:

1. Cessna 210 airplane	\$48500
2. Taylorcraft airplane (rebuilt)	\$9500
3. 1959 Jaguar (refurbishing)	\$4500
4. 1965 Jaguar XKE	\$5000
5. Fairchild PT 19 airplane	\$15000
6. Sofa in Utah	no value fixed ✓
7. Loveseat in Utah	no value fixed ✓
8. Antique survey equipment	no value fixed ✓
9. Two (2) guitars	no value fixed ✓
10. Oil painting	no value fixed ✓
11. Remington copies 5 Western pictures, 2 Indian picture, 2 cowboy picture	\$ 100
12. Books in Utah on Plaintiff's profession or hobbies or owned by Plaintiff before the marriage	\$ 100 ✓
13. Car engine hoist	\$ 200 ✓
14. Propane heaters	\$ 15
15. Drill press	\$ 150
16. Metal bender/shear	\$ 100
17. Old car steam cleaner	\$ 100
18. Tools in toolboxes and located in Utah garage excepting those tools awarded to the Defendant as set forth hereinafter	\$1000
19. All paint associated with car or aircraft restoration	\$ 500
20. Car/airplane parts	\$ 100
21. Raleigh 10-speed bike	\$ 15 ✓
22. Ski equipment purchased for Plaintiff	no value fixed

23. Small camelback trunk	\$ 75
24. Rectangular antique table, 6 chairs	\$1500
25. Telescope	\$ 200
SUBTOTAL	\$86655

As additional separate and pre-marital property the Plaintiff should be awarded all of his interest in SVS Corporation free and clear of any claim of the Defendant. While the Court is aware, and has so found, that the Plaintiff's interest in the corporation produces substantial income for the Plaintiff, this Court has not been persuaded as to any fixed value for the Plaintiff's interest in the Corporation, and has specifically not found any fixed value.

5. The following items of personal property should be awarded to the Defendant, the Court having found that they are the separate and pre-marital property of the Defendant:

1. Ethan Allen 72" round table/6 chairs	\$ 300
2. Ethan Allen hutch	\$ 200
3. 2 black love seats	\$ 350
4. Ethan Allen drop leaf end table	\$ 150
5. Armoire mirror doors	\$ 450
6. Dark Hoosier	\$ 500
7. Books, cookbooks, other books relating to the Defendant's interests and hobbies	no value fixed
8. Small TV from Bayliner Boat	no value fixed
9. Large canner pot	no value fixed
10. Victoria juicer/food processor	"
11. All tole painting in Canada	"
12. Alabaster green egg	"
13. Chicken pot pads	"

14. Small black bear	"
15. Small bear on coffee table	"
✓16. Small red stapler (Defendant's mother's)	"
✓17. 14" cast iron fry pan	"
18. Thumb print pan	"
✓19. 10" fry pan, 14" pan	"
✓20. Brass potholder	"
✓21. Bayliner 27' boat	\$13000
✓22. 1981 Buick	\$1000
✓23. 1981 Jaguar	\$4000
✓24. Antique secretary (Defendant's Mother's)	no value fixed
✓25. Kitchen Aid mixer	\$ 200
✓26. Sewing machine	\$ 200
✓27. Personal clothes	no value fixed
✓28. Animals handmade by Defendant	"
✓29. Crafts/leather	\$ 200
✓30. 2 rust love seats	\$ 600
✓31. Coffee table, leaded glass	\$ 500
✓32. Armoire (refinished)	\$ 600
✓33. Antique wingback chair (reupholstered)	\$ 350
✓34. Antique reproduction chair (reupholstered)	\$ 200
✓35. Barley twist drop leaf table and chair	\$ 300
✓36. Antique lamp and two sconces	\$ 200
✓37. Grandfather clock	\$ 599
✓38. Old antique clock	\$ 100
✓39. Marble backgammon set	no value fixed
✓40. Silver/china/crystal	\$2000

41. Antique tea set (Defendant's family heirloom)	no value fixed
42. Old goblets	no value fixed
43. Old Deacon chair/refinished	\$ 200
43. Patio table, chairs	\$ 900
44. Kitchen items	\$ 200
45. Headboard for king-size bed	no value fixed
46. Lamp	\$ 100
47. King-size bed located in Utah master bedroom	no value fixed
48. Triple dresser	no value fixed
49. 2 pews	\$ 100
50. Jewelry chest	no value fixed
51. 2 nightstands	no value fixed
52. Fireplace insert	\$ 350
53. Old antiques collected by Defendant	no value fixed
54. Lamp, pictures, coffee maker in Utah	"
55. Cookbooks	"
56. Pots and pans	"
57. 5 oil paintings (painted by Defendant's mother)	"
58. Picture grandfather	"
59. Commercial sewing machine	"
60. Antique desk chair	\$ 100
61. Antique school clock	no value fixed
62. Antique banjo	no value fixed
63. Antique bucksaw	no value fixed
64. Jewelry - heart diamond, round diamond, diamond bracelet, charms, chain	\$1000
65. Chain and chain bracelet	\$ 70
56. Park bench	no value fixed

67. Three cast iron chairs	"
68. Brown desk chair	"
✓69. All yard tools in Utah	"
✓70. Black velvet picture	"
71. Antique shoe repair (Defendant's family heirloom)	"
✓72. Sad irons (Defendant's family heirloom)	"
✓73. 2 brown flowered wingback chairs	\$ 100
✓74. Antique dresser in Canada master bedroom	\$ 500
✓75. Green bedroom wingback chair	\$ 100
✓76. Large armoire	\$ 350
77. Large antique trunk (refinished)	\$ 150
78. Old antique cans	no value fixed
✓79. Round drop-leaf end table	\$ 100
✓80. Pink antique jar	\$ 100
✓81. Brass pot holder	\$ 120
SUBTOTAL	\$30539

6. The Defendant should be awarded the home in Bloomington, St. George, Utah, subject to the encumbrance thereon, which she should henceforth be required to discharge. The Plaintiff should be awarded no interest in the Bloomington, St. George, Utah, home, but the Defendant should be required to indemnify and hold the Plaintiff harmless from the debt on this property.

7. The Plaintiff should be awarded all of the real property in Canada, free and clear of any claim by the Defendant. The Defendant should be given the right to enter onto the Canadian property for the purpose of reclaiming those items of personal property located in Canada and described above.

8. The Defendant is awarded, and the Plaintiff is ordered to pay, alimony in the amount of \$1,400.00 per month for a period of twenty-four months beginning September 1, 1992, and ending August 31, 1994. The Plaintiff should be ordered to pay all alimony payments to the Clerk of the Court so that the payment is received by the Clerk's Office no later than 5:00 P.M. on the first day of each month beginning September 1, 1992. In months when the first day of the month falls on a Saturday, a Sunday, or a legal holiday of the State of Utah, the payment shall be made so that it is received in the Clerk's Office no later than 5:00 P.M. of the last working day before the first day of the month falling on a weekend day or holiday.

9. The Decree of Divorce should also provide that if any alimony payment is not received by the Clerk's office when due, that a Judgment shall issue, forthwith, for the amount due upon the affidavit of the Defendant. Such a Judgment shall provide that it may be satisfied either from the income represented by the Plaintiff's stock or other ownership interest in SVS Corporation or by execution against the Plaintiff's stock or ownership interest in SVS Corporation or by other post-judgment remedies. Any such Judgment should also include this Court's findings with respect to jurisdiction over the parties, the mobility of the majority of the assets, and the Plaintiff's attempts to secret assets.

10. The Defendant should be awarded a Judgment against the Plaintiff in the amount of \$13,000.00, with interest thereon at the rate of 12% per annum, which represents this Courts adoption of the recommendation made by the Court's Commissioner for an award of temporary alimony. However, no execution shall issue upon such judgment so long as the Plaintiff makes monthly payments to the Clerk of the Court in the

same fashion as set forth in paragraph 9 immediately above in the amount of at least \$500.00 per month. Any such payments should be credited first against the accrued interest and then against the principal amount due. Interest should not accrue for any time prior to the date of this Memorandum Decision.

11. All items of property not specifically described in this Memorandum Decision should be awarded to the party awarded the realty where the property is located. If either party interferes with the other's acquisition of any of the personal property awarded by this Memorandum Decision and the Decree following therefrom, the party damaged may apply to the Court, under the provisions of Rule 4-501 of the Utah Code of Judicial Administration, and upon Motion supported by Affidavit and Memorandum of Points and Authorities, citing to this Memorandum Decision, for a Judgment for the dollar value of the personal property as established herein. Any such Judgment against the Defendant will reduce the temporary and rehabilitative awards of alimony by the amount of the Judgment. Any such Judgment against the Plaintiff may be collected as set forth in paragraph 10 immediately above.

12. All values in this Memorandum Decision and the Decree to follow are in U.S. dollars only.

13. ~~The Defendant~~, based upon her lesser earning capacity, should be awarded her Attorney's fees and costs in the amount of \$18,500.00. The Court acknowledges that this award is less than the reasonable attorney's fees of Mr. Shaw as found above, but the equities of this case demand a reduction to this level.

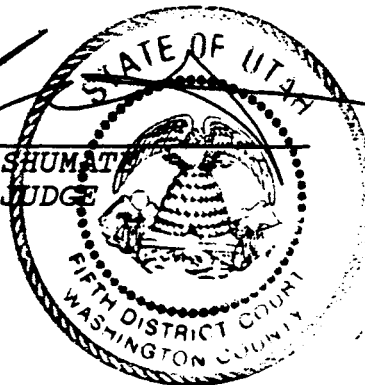
14. The Plaintiff should be required to pay the debts to Judy Jordan of \$12,000.00 and for the Cessna repair of \$8,000.00 as shown

above in the Findings of Fact.

15. All rulings of the Court's Commissioner and the Objections thereto are hereby merged into this Memorandum Decision and thereby resolved.

31st
DATED this 31 day of July, 1992.

JAMES L. SHUMATE
DISTRICT JUDGE

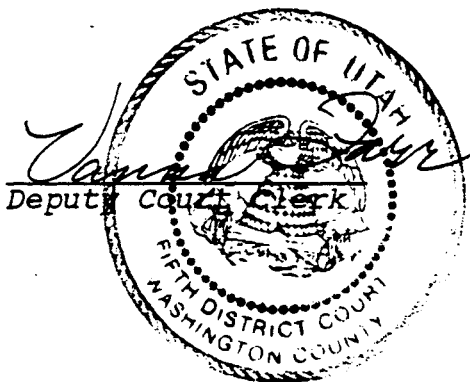


MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing Memorandum Decision and by first class mail, postage pre-paid this 31 day of July, 1992, to the following:

G. Michael Westfall
P. O. Box 367
St. George, Utah 84771

Michael R. Shaw
249 East Tabernacle, Ste.200
St. George, Utah 84770



Michael R. Shaw (#5142)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Defendant
249 East Tabernacle, Suite 200
St. George, Utah 84770
Tel: (801) 628-1627
Fax: (801) 628-5225

FIFTH DISTRICT COURT

'92 AUG 28 PM 2 03

WASHINGTON COUNTY

BY

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH

GARY K. SHELTON,)	
)	
Plaintiff,)	FINAL ORDER OF PROPERTY DIVISION,
)	ALIMONY, AND ATTORNEY'S FEES
vs.)	
)	
JERILYN A. SHELTON,)	Case No. 924500159
)	
Defendant.)	Judge James L. Shumate

The above-entitled matter came before the Court for trial, beginning on April 6, 1992. Both parties appeared in person. Plaintiff was represented by G. Michael Westfall, of the firm of Gallian and Westfall. Defendant was represented by Michael R. Shaw, of the firm of Jones, Waldo, Holbrook and McDonough. The parties each testified and offered other witnesses and exhibits. At the request of the Court, each party submitted a proposed inventory and distribution of assets on 3-1/2 inch computer disk to aid the Court in the preparation of its Decision. Upon the stipulation of the parties, the Court granted a Decree of Divorce early on in the proceedings, reserving for later ruling all issues of property division and valuation, debt allocation, alimony, and attorney's fees. Counsel for both parties were ordered to submit final argument in the form of written memoranda. The final such pleading was filed with the Court on June 4, 1992. The Court had taken under advisement all issues presented at trial, together with all outstanding objections to the previous rulings made by the Court's Commissioner, plus motions to

strike those objections. The rulings made by the Commissioner and objected to by Plaintiff are: 1) Commissioner's Memorandum and Recommended Decision, filed March 6, 1992; 2) the Order of Contempt, filed April 6, 1992; and 3) the Order on Defendant's Motion to Compel Discovery, filed April 6, 1992.

The Court has reviewed the testimony, exhibits, transcripts of proceedings before the Commissioner, and the memoranda and other pleadings submitted by the parties. The Court has entered its Findings of Fact and Conclusions of Law by Memorandum Decision dated July 31, 1992, and based thereon hereby ORDERS as follows:

1. The following items of personal property associated with the Williston Lake property and farming operation in Canada, and found by the Court to be part of the marital property, are hereby awarded to Plaintiff with the associated values as fixed by the Court:

<u>Description of Item</u>		
1.	D-8 caterpillar	\$8500
2.	Case 4x4 tractor	\$8900
3.	Root rake	\$1000
4.	Packer	\$ 650
5.	3 bottom plow	\$ 950
6.	Breaking plow	\$1350
7.	Seeder	\$ 500
8.	Cutter	\$ 900
9.	1941 antique army truck	\$5000
10.	Skid shed/supplies	\$ 300
11.	Drill seeder	\$ 200
12.	Water pump	\$ 200

13.	Small caterpillar	\$1200
14.	Root picker	\$ 500
15.	3 chain saws	\$ 400
16.	Misc. tools	\$2000
17.	Blue house 2 bedroom (gift)	\$1000
18.	Small table	\$ 50
19.	Kitchen stove in guest cabin	\$ 50
20.	Kitchen appliances, pots, pans in guest cabin	200
21.	Linens in guest cabin	\$ 500
22.	2 rockers in guest cabin	\$ 70
23.	Large oval rugs (gift)	\$ 1
24.	Wood stove in guest cabin	\$ 200
25.	Paperback books in guest cabin	\$ 1
26.	VCR in guest cabin	\$ 150
27.	Small generator in guest cabin	\$ 100
28.	Large generator in guest cabin	\$ 300
29.	3 down comforters in guest cabin	\$ 200
30.	Small antique dresser	\$ 150
31.	Antique trunk	\$ 50
32.	Sleeping bags in guest cabin	\$ 250
33.	Cook stove wood/propane in log home	\$ 800
34.	Light kitchen Hoosier in log home	\$ 300
35.	Large brown sofa in log home	\$ 50
36.	Old office furniture implements in log home	\$ 100
37.	Utility table in log home	\$ 50
38.	Treadle sewing machine in log home (refinished)	\$ 150
39.	Several silk flowers in log home	\$ 20

40.	2 wall lanterns (gift)	\$ 75
41.	1 large crock	\$ 45
42.	Linens in log home	\$ 250
43.	Dresser/sink built into log home	value in realty
44.	Corning dishes	\$ 75
45.	China in log home	\$ 100
46.	Wood chopping cart in log home	\$ 50
47.	Antique piano chair	\$ 100
48.	2 attorney bookcases in log home	\$ 250
49.	Propane refrigerator in log home	\$ 350
50.	Antique icebox in log home (refinished)	\$ 150
51.	Antique scale in log home	\$ 85
52.	Misc. antique bottles	\$ 50
53.	Antique towel rack, antique mirror (refinished)	no value fixed
54.	Dressing mirror	\$ 30
55.	Handmade bedspread/curtains in log home	\$ 100
56.	2 bear pictures in log home	no value fixed
57.	2 chaise lounges	\$ 50
58.	Lawnmower	\$ 50
59.	Barbecue grill	\$ 75
60.	Misc. lawn chairs	no value fixed
61.	Antique barrels	\$ 60
62.	Smoker gift	no value fixed
63.	Brother typewriter	\$ 50
64.	Antique parlor stove in log home	\$ 100
65.	Pressure washer	\$ 200
66.	Tools located in Canada	\$1000
67.	Yellow canoe located in garage in Canada	\$ 300

68.	Orange canoe located in garage in Canada	\$ 50
69.	19' Arenacraft boat located in Canada	\$3500
70.	New motor located in garage in Canada	\$1300
71.	Antique buckboard	\$ 150
72.	All fishing gear located in Canada	\$ 250
73	Color fish finder	\$ 200
74.	Antique icebox located in garage in Canada	\$ 100
75.	Antique secretary located in garage in Canada	\$ 50
76.	Power saw, radial arm located in Canada	\$ 400
77.	Misc. supplies--chimney, pipe, flooring, oak, etc.	\$ 500
78.	Antique 1 lung motor located in garage in Canada	\$ 50
79.	Misc. hoses, pulleys, cable,	\$ 400
80.	3 ice chests	\$ 20
81.	Wheelbarrow	\$ 20
82.	Antique brass bed	\$ 100
83.	Antique soda fountain chairs	\$ 80
84.	Trailer	\$ 200
85.	2 fly-tying sets	\$ 50
86.	Antique farm implements	\$ 100
87.	Radio phone	\$ 350
88.	CB	\$ 5
89.	Radar Detector	\$ 150
90.	3 end tables	\$ 100
91.	Wall unit	\$ 150
SUBTOTAL		\$49,207

2. The following items of personal property are hereby awarded to Defendant as her sole and separate property from those items found by

the Court as marital property with the associated value as fixed by the Court:

1. Antique child crib (refinished)	\$ 75
2. Misc. crafts/leather/patterns; misc. cookbooks and pictures (gift)	no value fixed
3. ✓ Tole painting/wreaths/farm-animals	no value fixed
4. ✓ Large bird cage	\$ 50
5. ✓ Canning jars/supplies	\$ 350
6. Glass cabinet	\$ 650
✓ 7. Handmade log box	\$ 100
✓ 8. Pressure canner	\$ 100
✓ 9. 1 30-30 semi-automatic rifle (gift)	\$ 200
10. ✓ Afghan given to Ms. Dawson	\$ 50
11. Large canner pot	\$ 50
12. ✓ Silver canoe	\$ 200
13. ✓ Antique crib (unfinished)	\$ 100
✓ 14. Electric jigsaw	\$ 20
15. Antique barley twist table	\$ 300
16. 3 antique pressback chairs, refinished	\$ 300
17. Dark bookshelf w/ glass shelves	\$ 100
18. King-size bed	\$ 200
19. Headboard for king-size bed	no value fixed
20. Headboard (handmade)	\$ 40
21. Bedspread/curtains (hand-quilted)	\$ 50
22. 2 recliners	\$ 100
23. 4 bookcases	no value fixed
24. Fireplace insert	\$ 300
25. TV, stereo, tape, disc, VCR	\$1500

26.	Tole painting paint, brushes, sewing machine	no value fixed
27.	G.E. refrigerator	\$ 500
28.	Dehydronator	\$ 5
29.	Powder guns (2)	no value fixed
30.	Two violins	no value fixed
31.	Garnet ring	\$ 50
32.	Wedding ring	\$ 300
33.	Large ice chest	no value fixed
34.	Air brush	\$ 130
35.	Small park bench	no value fixed
36.	Schwinn tandem bike	\$ 300
37.	Saw, hammer, drill, level, wood clamps, wrenches (both socket, crescent, pipe and box-end, if any) screwdriver set	no value fixed
38.	Raleigh 10-speed bike	\$ 15
39.	Ski equipment purchased for Defendant	no value fixed
40.	Garage vac	no value fixed
41.	Ladder	no value fixed
SUBTOTALS		\$6135

3. The following items are hereby awarded to Plaintiff, the Court having found that they are separate and premarital property owned by Plaintiff before the marriage of the parties:

1.	Cessna 210 airplane	\$48500
2.	Taylorcraft airplane (rebuilt)	\$9500
3.	1959 Jaguar (refurbishing)	\$4500
4.	1965 Jaguar XKE	\$5000
5.	Fairchild PT 19 airplane	\$15000
6.	Sofa in Utah	no value fixed

7.	Loveseat in Utah	no value fixed
8.	Antique survey equipment	no value fixed
9.	Two (2) guitars	no value fixed
10.	Oil painting	no value fixed
11.	Remington copies 5 Western pictures, 2 Indian picture, 2 cowboy picture	\$ 100
12.	Books in Utah on Plaintiff's profession or hobbies or owned by Plaintiff before the marriage	\$ 100
13.	Car engine hoist	\$ 200
14.	Propane heaters	\$ 15
15.	Drill press	\$ 150
16.	Metal bender/shear	\$ 100
17.	Old car steam cleaner	\$ 100
18.	Tools in toolboxes and located in Utah garage excepting those tools awarded to Defendant as set forth hereinafter	\$1000
19.	All paint associated with car or aircraft restoration	\$ 500
20.	Car/airplane parts	\$ 100
21.	Raleigh 10-speed bike	\$ 15
22.	Ski equipment purchased for Plaintiff	no value fixed
23.	Small camelback trunk	\$ 75
24.	Rectangular antique table, 6 chairs	\$1500
25.	Telescope	\$ 200
SUBTOTAL		\$86655

As additional separate and premarital property, Plaintiff is awarded all of his interest in SVS Corporation free and clear of any claim of Defendant. While the Court is aware, and has so found, that Plaintiff's interest in the corporation produces substantial income for Plaintiff, this Court has not been persuaded as to any fixed value for

Plaintiff's interest in the Corporation, and has specifically not found any fixed value.

4. The following items of personal property are hereby awarded to Defendant, the Court having found that they are the separate and pre-marital property of Defendant:

- | | |
|--|----------------|
| 1. ✓ Ethan Allen 72" round table/6 chairs | \$ 300 |
| 2. ✓ Ethan Allen hutch | \$ 200 |
| 3. ✓ 2 black love seats | \$ 350 |
| 4. ✓ Ethan Allen drop leaf end table | \$ 150 |
| 5. ✓ Armoire mirror doors | \$ 450 |
| 6. ✓ Dark Hoosier | \$ 500 |
| 7. Books, cookbooks, other books relating to Defendant's interests and hobbies | no value fixed |
| 8. ✓ Small TV from Bayliner Boat | no value fixed |
| 9. Large canner pot | no value fixed |
| 10. ✓ Victoria juicer/food processor | " |
| 11. All tole painting in Canada | " |
| 12. ✓ Alabaster green egg | " |
| 13. ✓ Chicken pot pads | " |
| 14. Small black bear | " |
| 15. Small bear on coffee table | " |
| 16. ✓ Small red stapler (Defendant's mother's) | " |
| 17. ✓ 14" cast iron fry pan | " |
| 18. Thumb print pan | " |
| 19. 10" fry pan, 14" pan | " |
| 20. Brass potholder | " |
| 21. Bayliner 27' boat | \$13000 |
| 22. 1984 Buick | \$1000 |

23.	1981 Jaguar	\$4000
24.	Antique secretary (Defendant's mother's)	no value fixed
25.	Kitchen Aid mixer	\$ 200
26.	Sewing machine	\$ 200
27.	Personal clothes	no value fixed
28.	Animals handmade by Defendant	"
29.	Crafts/leather	\$ 200
30.	2 rust love seats	\$ 600
31.	Coffee table, leaded glass	\$ 500
32.	Armoire (refinished)	\$ 600
33.	Antique wingback chair (reupholstered)	\$ 350
34.	Antique reproduction chair (reupholstered)	\$ 200
35.	Barley twist drop leaf table and chair	\$ 300
36.	Antique lamp and two sconces	\$ 200
37.	Grandfather clock	\$ 599
38.	Old antique clock	\$ 100
39.	Marble backgammon set	no value fixed
40.	Silver/china/crystal	\$2000
41.	Antique tea set (Defendant's family heirloom)	no value fixed
42.	Old goblets	no value fixed
43.	Old Deacon chair/refinished	\$ 200
43.	Patio table, chairs	\$ 900
44.	Kitchen items	\$ 200
45.	Headboard for king-size bed	no value fixed
46.	Lamp	\$ 100
47.	King-size bed located in Utah master bedroom	no value fixed
48.	Triple dresser	no value fixed
49.	2 pews	\$ 100

50. Jewelry chest	no value fixed
51. 2 nightstands	no value fixed
52. Fireplace insert	\$ 350
53. Old antiques collected by Defendant	no value fixed
54. Lamp, pictures, coffee maker in Utah	"
55. Cookbooks	"
56. Pots and pans	"
57. 5 oil paintings (painted by Defendant's mother)	"
58. Picture grandfather	"
59. Commercial sewing machine	"
60. Antique desk chair	\$ 100
61. Antique school clock	no value fixed
62. Antique banjo	no value fixed
63. Antique bucksaw	no value fixed
64. Jewelry - heart diamond, round diamond, diamond bracelet, charms, chain	\$1000
65. Chain and chain bracelet	\$ 70
66. Park bench	no value fixed
67. Three cast iron chairs	"
68. Brown desk chair	"
69. All yard tools in Utah	"
70. Black velvet picture	"
71. Antique shoe repair (Defendant's family heirloom)	"
72. Sad irons (Defendant's family heirloom)	"
73. 2 brown flowered wingback chairs	\$ 100
74. Antique dresser in Canada master bedroom	\$ 500
75. Green bedroom wingback chair	\$ 100
76. Large armoire	\$ 350

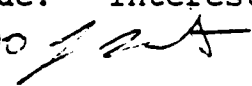
77. Large antique trunk (refinished)	\$ 150
78. Old antique cans	no value fixed
79. Round drop-leaf end table	\$ 100
80. Pink antique jar	\$ 100
81. Brass pot holder	\$ 120
SUBTOTAL	\$30539

5. Defendant is hereby awarded the home in Bloomington, St. George, Utah, subject to the encumbrance thereon, which she shall henceforth be required to discharge. Plaintiff is awarded no interest in the Bloomington, St. George, Utah, home, but Defendant is ordered to indemnify and hold Plaintiff harmless from the debt on this property.

6. Plaintiff is hereby awarded all of the real property in Canada, free and clear of any claim by Defendant. Defendant shall have the right to enter onto the Canadian property for the purpose of reclaiming those items of personal property located in Canada and described above.

7. Defendant is awarded, and Plaintiff is ordered to pay, alimony in the amount of \$1,400.00 per month for a period of twenty-four (24) months beginning September 1, 1992, and ending August 31, 1994. Plaintiff is ordered to pay all alimony payments to the Clerk of the Court so that the payment is received by the Clerk's Office no later than 5:00 P.M. on the first day of each month beginning September 1, 1992. In months when the first day of the month falls on a Saturday, a Sunday, or a legal holiday of the State of Utah, the payment shall be made so that it is received in the Clerk's Office no later than 5:00 P.M. of the last working day before the first day of the month falling on a weekend day or holiday.

8. If any alimony payment is not received by the Clerk's office when due, a Judgment shall issue, forthwith, for the amount due upon the affidavit of Defendant. Such a Judgment shall provide that it may be satisfied either from the income represented by Plaintiff's stock or other ownership interest in SVS Corporation or by execution against Plaintiff's stock or ownership interest in SVS Corporation or by other post-judgment remedies. Any such Judgment shall also include this Court's findings with respect to jurisdiction over the parties, the mobility of the majority of the assets, and Plaintiff's attempts to secrete assets.

9. Defendant is awarded a Judgment against Plaintiff in the amount of \$13,000.00, with interest thereon at the rate of 12% per annum, which represents this Court's adoption of the recommendation made by the Court's Commissioner for an award of temporary alimony. However, no execution shall issue upon such Judgment so long as Plaintiff makes monthly payments to the Clerk of the Court in the same fashion as set forth in paragraph 8 immediately above in the amount of at least \$500.00 per month. Any such payments shall be credited first against the accrued interest and then against the principal amount due. Interest shall accrue from and after July 31, 1992. *on this \$13,000.00* 

10. All items of property not specifically described in this Order are awarded to the party awarded the realty where the property is located. If either party interferes with the other's acquisition of any of the personal property awarded by this Order, the party damaged may apply to the Court, under the provisions of Rule 4-501 of the Utah Code of Judicial Administration, and upon Motion supported by Affidavit and Memorandum of Points and Authorities, citing to the Memorandum Decision or this Order, for a Judgment for the dollar value of the personal

property as established herein. Any such Judgment against Defendant will reduce the temporary and rehabilitative awards of alimony by the amount of the Judgment. Any such Judgment against Plaintiff may be collected as set forth in paragraph 8 immediately above.

11. All values in this Order are in U.S. dollars only.

12. Defendant, based upon her lesser earning capacity, is awarded her attorney's fees and costs in the amount of \$18,500.00. The Court acknowledges that this award is less than the reasonable attorney's fees of Mr. Shaw as previously found, but the equities of this case demand a reduction to this level.

13. Plaintiff is ordered to pay the debts to Judy Jordan of \$12,000.00 and for the Cessna repair of \$8,000.00.

14. All rulings of the Court's Commissioner and the Objections thereto are hereby merged into this Order and thereby resolved.

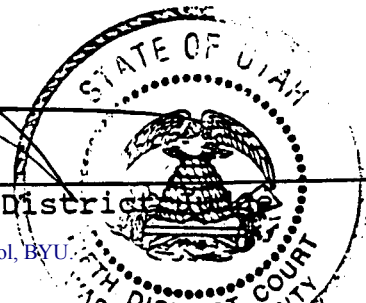
15. Each party is ordered to pay his or her own debts and obligations incurred by such party and not otherwise allocated herein.

16. Each party is ordered to sign such consents and conveyances as may be appropriate to carry out the provisions of this Order.

17. Due to the length of this Order, the same may be supplemented by such separate Orders dealing with specific obligations or assets as may be reasonably requested by motion of either party under UCJA Rule 4-501 to facilitate such ends as recordation as to real property ownership or similar effectuation of the terms hereof.

DATED this 28th day of August, 1992.


JAMES L. SHUMATE, District Judge



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct unsigned copy of the above and foregoing Final Order of Property Division, Alimony, and Attorney's Fees by first class mail, postage prepaid, this 28th day of August, 1992, to the following:

Gary K. Shelton
Box 119
Hudson Hope, B.C.
VOC1V0

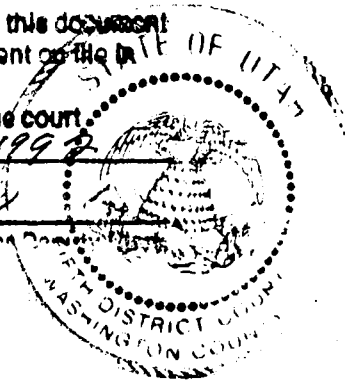
STATE OF UTAH)
COUNTY OF WASHINGTON) ss

I, the undersigned Clerk of the
DISTRICT COURT, certify that this document
is a true copy of the original document on file in
the Clerk's office

WITNESS my hand and seal of the court

this date: August 28, 1992

Lanna Jark



Michael R. Shelton